

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

This matter came before the Court for hearing on December 20, 2019, pursuant to Federal Rule of Civil Procedure 23 and the Order Granting Preliminary Approval of Class Action Settlement (ECF No. 335) (“Preliminary Approval Order”). Plaintiffs seek final approval of the Settlement Agreement and Release (the “Agreement”) (see ECF No. 331-1), an award of attorneys’ fees and cost reimbursements to Class Counsel and Other Plaintiffs’ Counsel, and service awards to each of the Plaintiffs. The Notice Program having been administered as called for under the Settlement and required by the Preliminary Approval Order, and the Court having considered all papers filed and proceedings held, and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order incorporates and approves the Agreement and the Settlement set forth therein. Any term not defined herein shall have the meaning ascribed to it as set forth in the Agreement.

2. Applying the *Churchill* factors, the Court finds that the Settlement is fair, reasonable and adequate in all material respects.

A. The Plaintiffs do not have a strong case. For members of the class that experienced fraud, they will have to prove that the fraud was a result of the Zappos data breach. For members that have not experienced fraud, they will

1 have to prove that the data breach placed them in imminent risk of harm nearly
2 a decade after the incident occurred. These are substantial burdens.

3 B. The Plaintiffs' case is risky, complex, expensive, and likely to proceed for many
4 months if not years absent a settlement. Since, the merits are not strong in this
5 case, there is a strong chance for failure. The case raises numerous complex
6 issues including standing, the value of personal information, and liability for
7 the negligent handling of such information. The case has not proceeded far into
8 the discovery phase as it was dismissed under Rule 12, so the case will likely
9 proceed for years at great expense.

10 C. As this Court has previously noted, the class will experience difficulty in
11 maintaining its class status, since some class members experienced fraud and
12 others did not.

13 D. The most troubling aspect of the Settlement is the Settlement amount, which is
14 only a 10% coupon. However, a value of \$5,031,166 has been redeemed as of
15 December 12, 2019 showing that the coupons have a value to the class.
16 Defendant's wide variety of items reinforces this finding.

17 E. There has been over 160,000 pages of discovery produced. Therefore, both
18 parties have sufficient information to make informed decisions concerning
19 settlement.

20 F. The case has not proceeded far into the discovery phase. Nonetheless, the
21 relatively early stage of the proceedings does not weigh heavily against
22 approval of the settlement, becasue the case has been ongoing for seven years.

23 G. Counsel in this case has significant complex litigation experience and
24 recommends approval of the settlement.

25 H. As of December 12, 2019, 292,000 members have redeemed their coupon codes
26 for over five million dollars in discounts; only fifty-three members have filed
27 objections and 177 have opted out.

1 3. Applying the *In re Bluetooth* factors, the Court finds that the Settlement is the
2 product of good faith, non-collusive, arm's length negotiations.

3 A. The Settlement award is proportionate to the attorney's fees.

4 B. The Defendant will not challenge the fee award.

5 C. Fees not rewarded to class members would not revert back to Defendant.

6 4. This Court holds that it has jurisdiction over the subject matter of the Actions, all
7 Parties to the Actions and all Settlement Class Members with respect to the Settlement and this
8 Order and Judgment.

9 5. The Court appoints plaintiffs Theresa D. Stevens, Denise Relethford, Emily E.
10 Braxton, Stephanie Preira (also known as Stephanie Huppert), Robert Ree, Patti Hasner, Dahlia
11 Habashy (also known as Dahlia Bonzagni), Katharine Vorhoff and Shari Simon as the
12 representatives of the Settlement Class.

13 6. The Court appoints Ben Barnow (Barnow and Associates, P.C.), Jeremiah Frei-
14 Pearson (Finkelstein, Blankinship, Frei-Pearson & Garber, LLP), Mark Godino (Glancy Prongay
15 & Murray, LLP) and Richard Coffman (The Coffman Law Firm) as Class Counsel.

16 7. For purposes of the Settlement only, the Court finds that the requirements of
17 Federal Rule of Civil Procedure 23 are satisfied with respect to the Settlement Class: (a) the
18 members of the Settlement Class are so numerous that joinder of all of them is impracticable;
19 (b) there are questions of law and fact common to the Settlement Class that predominate;
20 (c) Plaintiffs' claims are typical of the claims of the Settlement Class; and (d) Plaintiffs and Class
21 Counsel have and will fairly and adequately represent the Settlement Class.

22 8. For purposes of the Settlement only, the Settlement Class is certified as follows:

23 All natural persons or legal entities who had a Zappos.com account at any time on
24 or prior to January 15, 2012 and for whom Zappos had an email address for the
25 account in its records at that time. Excluded from the Settlement Class are: (a) individuals
26 who are or were during the Class Period officers or directors of Zappos or any of its
subsidiaries or affiliates; (b) any justice, judge, magistrate judge or law
clerk of the Court, the United States Court of Appeals for the Ninth Circuit or the
United States Supreme Court; and (c) all governmental entities.

1 9. The Court finds that the Notice Program fully and accurately informed the
2 Settlement Class of all material elements of the Settlement, and constituted valid, due and
3 sufficient notice to all individuals in the Settlement Class, and the best notice practicable under
4 the circumstances, and that the Notice Program satisfied Federal Rule of Civil Procedure 23 and
5 due process.

6 10. The Court holds that the individuals identified in Exhibit 1 hereto are excluded from
7 the Settlement Class because they submitted timely and valid Requests for Exclusion pursuant to
8 the Notice Program.

9 11. The Court overrules each of the objections to the Settlement on the merits. Pursuant
10 to 28 U.S.C. § 1712(e), the Court finds that the actual value delivered to Settlement Class
11 Members, in the form of actually redeemed Discount Codes, substantially exceeds \$5,000,000,
12 and accordingly the Settlement is fair, reasonable, and adequate for class members.

13 12. The Court approves service awards in the amount of \$2,500 to each of the Plaintiffs,
14 for a sum total of \$22,500, for their service as Class Representatives. Class Counsel and Other
15 Plaintiffs' Counsel are awarded reimbursement of costs and expenses of 109,533, and are
16 awarded \$1,487,967 for attorneys' fees. The fee award is substantially less than 30% of the value
17 actually conferred upon the Settlement Class, and is also substantially less than counsel's lodestar.
18 The Court finds that such awards are fair and reasonable, and orders that they be paid by Zappos
19 directly to Class Counsel in accordance with the Agreement and at the time set forth therein.
20 Class Counsel is thereafter ordered to distribute amounts due to Plaintiffs and to Other Plaintiffs'
21 Counsel; Zappos is not responsible for such further distribution and Zappos discharges its
22 financial responsibilities by making payment to Class Counsel.

23 13. The Court orders the Parties to the Agreement and the Settlement Administrator to
24 continue to perform their obligations thereunder pursuant to the terms of the Agreement.

25 14. The Court orders that judgment be entered forthwith on the terms of the Settlement
26 as set forth in this Order, and dismisses the MDL and the Actions, including all claims and causes
27 of action asserted in the Actions, the MDL, the TAC or any other pleading or other document

1 filed in the Actions, on the merits and with prejudice, as to the Class Representatives and all
2 Settlement Class Members. This dismissal is without costs or fees to any Party except as
3 specifically provided in the Agreement and this Order.

4 15. The Court adjudges that the Class Representatives and all Settlement Class
5 Members (except for those identified on Exhibit 1 hereto) are conclusively deemed to have
6 forever, fully and finally released and discharged the Released Parties from any and all Released
7 Claims, as those terms are defined in the Agreement.

8 16. Without affecting the finality of this Order or the judgment to be entered thereon,
9 the Court retains jurisdiction over: (a) implementation and enforcement of the Settlement
10 pursuant to further orders of the Court, until such time as the final judgment contemplated hereby
11 has become effective and each and every act agreed to be performed by the Parties hereto shall
12 have been performed pursuant to the Agreement, including all payments set forth thereunder; (b)
13 any other action necessary to conclude this Settlement and implement the Agreement; and (c) the
14 modification, enforcement, effecutation, construction and interpretation of the Agreement
15 including, without limitation, any dispute concerning Settlement Class Members' release of
16 Released Claims, and the Settlement.

17 17. Except for the individuals identified on Exhibit 1 hereto, Plaintiffs and each and
18 every Settlement Class Member, and any person acting on behalf of Plaintiffs or any Settlement
19 Class Member, are hereby permanently barred and enjoined from commencing, instituting,
20 continuing, pursuing, maintaining, prosecuting or enforcing any Released Claims (including,
21 without limitation, in any individual, class or putative class, representative or other action or
22 proceeding), directly or indirectly, in any judicial, administrative, arbitral or other forum, against
23 the Released Parties. This permanent bar and injunction is necessary to protect and effectuate the
24 Settlement, this Order and this Court's authority to effectuate the Settlement, and is ordered in
25 aid of this Court's jurisdiction and to protect its judgments pursuant to the All Writs Act, 28
26 U.S.C. § 1651, or any other applicable law. In the event that any provision of the Agreement or
27 this Order or the judgment to be entered thereon is asserted by Zappos as a defense in whole or
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1 in part to any claim, or otherwise asserted (including, without limitation, as a basis for a stay) in
2 any other suit, action or proceeding brought by a Settlement Class Member or any person acting
3 on behalf of any Settlement Class Member, that suit, action or other proceeding shall be
4 immediately stayed and enjoined until this Court or the court or tribunal in which the claim is
5 pending has determined any issues related to such defense or assertion. By incorporating the
6 Agreement, including the Exhibits attached thereto, and its terms therein, the Court determines
7 that this Order complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

8 18. The Agreement, including the Exhibits attached thereto, and any and all
9 negotiations, documents and discussions associated with it will not be deemed or construed to be
10 an admission or evidence of any violation of any statute, law, rule, regulation or principle of
11 common law or equity, or of any liability or wrongdoing by any Released Party, or the truth of
12 any of the claims. Evidence relating to the Settlement will not be discoverable or used, directly
13 or indirectly, in any way, whether in the Actions or in any other action or proceeding, except for
14 purposes of demonstrating, describing, implementing or enforcing the terms and conditions of
15 the Settlement, the Preliminary Approval Order and/or this Order or the judgment to be entered
16 thereon.

19. The Clerk shall enter judgment forthwith as set forth herein and close the case.

IT IS SO ORDERED.

Dated: December 23, 2019.


Hon. Robert C. Jones
United States District Court Judge

1 Exhibit 1

2 *In re Zappos Security Breach Litigation*

3 Exclusion Requests

4
5 Eric Abarabar
6 Marcella Abarabar
7 Rachel Rice Ackman
8 Nicholas Ade
9 Betty Aguilar
10 Yulia Arlandiz
11 Sergio Arlandiz
12 Maria Jose Ayerbe
13 Ed Ayres
14 Patricio Barbosa
15 Robert Barton
16 Linda Beckwith
17 Lisa Bernier
18 Star Bertone
19 David Bing
20 Kristi Bochniak
21 Jeff Bradley
22 Amory Brandt
23 Yovonda Brooks
24 Michael Buchino
25 Amy Burns
26 Liz Caporaso
27 Vincent Cardenas
28 Mandie Carlson
29 Graham Cavanagh
30 Jerilyn Champness
31 Cate Chang
32 Joy Chen
33 Jeanie Clemons
34 Linda M Clfford
35 Julia Conroy
36 Barbara Conway
37 Alan Crawley
38 Lauren Daniels
39 Maggie Dean
40 Cindy DeSilva
41 Alexandra Dew

1 W Dombrowski
2 Eric Elbogen
3 Aurora Endres-Bercher
4 Obianuju Enendu
5 Rachel Erickson
6 Alexander Clarence Esche
7 Wanda F. Ezozo
8 Thomas Farrington
9 Sandra Ferrari
10 Michael Fish
11 Molly Fitzgerald
12 Diane Friling
13 Carol Gaim
14 Frank Garcia
15 Brian Gebhardt
16 Janet George
17 PM Golden
18 Kirk Guest
19 Scott Gundrum
20 Jeff Halevy
21 ConstanDivine(CD) Harris
22 Ann Harrison
23 Bruce Hart
24 Luke Hazelwood
25 Miranda Hirner
26 Stephen Huebner
27 Kimberly Irving
28 Steven Irwin
29 Darvin Joy
30 Terese Juliano
31 Jason Karmam
32 Alicia Kelly
33 Oh-Yoon Kim
34 Hanna Kim
35 A King
36 Shelley Kinser
37 Suzanne Kley
38 Mark Knapp
39 Barry Kohler
40 Katie Kotiza
41 Jeff Krans
42 Leo Kranz
43 Annie Labruzzo
44 Vincent Laforet

1 Danielle Lahmani
2 Jordon Lakoduk
3 Dana Lear
4 Linda Lee
5 Michael Lees
6 Rufino de Leon
7 Jesse Lindmar
8 Diana Little
9 Irene Lucado
10 Maryellen Luizer
11 May Ly
12 James Malmborg
13 Jerome Massy
14 Linda Mathews
15 Karen O Mccracken
16 Gregory Meena
17 Margaret Messina
18 Marcy Milks
19 LuAnn Miller
20 Andrea Mitchell
21 James Monroe
22 Matt Mower
23 Meghan Mulgrew
24 Alicia Nashel-Watts
25 Jeffrey Noel-Nosbaum
26 Eng Ong
27 Genji Onishi
28 Nicole Osilaja
18 Derek Owens
19 Darren Page
20 Greg Pansa
21 Patricia Pedersen
22 Matthew Pelz
23 Andrew Perrong
24 Susan Pinti
25 Joshua Pitkoff
26 David Rabiger
27 Eddie Rangel
28 Chad Redmond
19 Ivette Redmond
20 Alex Robb
21 Hilary Robbeloth
22 Adam Roberts
23 Heather Robinson

1 Monica Robinson
2 Sarah Rodwell
3 Joshua Rodwell
4 Susan Rossbach
5 David Rousseau
6 Cynthia Roy
7 Babak Samii
8 Nathaniel Sandy
9 Mary Semenza
10 Li Shao
11 Daniel Shockley
12 Barbara Shreve
13 Chris Silva
14 Justin Skiff
15 Debbie Sora
16 Padelia Spartali
17 Camille Van Steenwyk
18 Bartholomew Sullivan
19 Nicole Svigilsky
20 Marilyn Sydow
21 Linda Taing
22 Nick Tarasen
23 Mooshe Taylor
24 Alan Taylor
25 Lou Ann Thom
26 Amy Thompson
27 Lloyd Thompson
28 Prudence M. Thorner
29 M Todd
30 Mary Tremain
31 Linda Trimbath
32 Ramina Trust
33 Rachel E. Vanada
34 Tereza Vejvodova
35 Andrew J. Villanueva
36 Marilyn Volpe
37 Jeremy Wadsack
38 Lisa Walter
39 Matt Warner
40 Julia Warner
41 Janis McGee Washington
42 Cheryl Weller
43 Danielle Whitehouse
44 Elizabeth D. Whitman

1 Amber Willard
2 Patrice Winters
3 Brian Witt
4 Stephen Wood
5 Lauren Wool
6 Linda Wurtz
7 Robert Yates
8 Warren Yokom

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